

## **REMARKS**

Applicant thanks the examiner for the brief telephone discussions of November 30, 2005 and December 16, 2005. In view of the forgoing amendments and the following remarks, it is believed that this application is now in condition for allowance over the art of record. Reconsideration is respectfully requested.

Claims 1 and 3-53 are pending in this application. By this amendment, claims 1, 4, 7, 9, 12, 13, 14, 15, 16, 17, 21, 23, 26, 28, 29, 31 and 34 are amended. Claims 3, 8, 10 and 42-53 are canceled. New dependant claims 54-64 are added.

**Amendments to Independent Claims 1, 7, 9, 17, 29, and 31.** These claims currently stand rejected under Section 103 based upon Robinson (U.S. 5,999,899) in view of Walsh (U.S. 6,144,848). Reconsideration is respectfully requested.

With the present amendments, each independent claim now expressly includes a limitation of a "cellular telephone". Additionally, Applicant amends claim 1 (system claim) to include a limitation that the cellular telephone is used to "wirelessly select and retrieve" a music recording from a remote facility. Applicant amends each of claims 7, 9, 17 and 29 (device claims) to include "an input for selecting a music recording" and "a receiver for wirelessly receiving the selected music recording after it is selected." Applicant amends claim 31 (device claim) to include a limitation that a music recording in a memory of the cellular telephone is "selected with said device and then wirelessly received by said receiver".

Applicant makes these amendments, without prejudice, to advance prosecution in this application and to simplify the claims, but reserves the right to file one or more continuation applications with claims directed to any claimed subject matter that is herein deleted, canceled or otherwise amended.

**Non-Analogous Art.** Applicant submits that Robinson and particularly Walsh are non-analogous art. The general scope of each, and particularly Walsh, is outside the field of endeavor of the presently claimed application. Additionally, neither Robinson nor Walsh is directed to the problem(s) addressed by the presently claimed invention.

**No *Prima Facie* Case.** Applicant also submits that the Patent Office has made no *prima facie* case of obviousness. First, there is no motivation in either Robinson or Walsh to combine the references. Second, there is no reasonable expectation that such a combination would be successful. Third, combining the references does not teach all of the claimed limitations.

Applicant's claimed invention(s), as set forth in the independent claims and the additional pending claims, is/are an incredibly unique system for distributing music to a cellular telephone and a portable wireless digital music device in the form of a

cellular telephone. The presently claimed invention enables use of a single integrated mobile cellular telephone to select a music recording from a remote source, wirelessly receive the selected music recording from the remote source, store the music recording in so that it can be carried about, play the stored music recording at any location, and enable voice communications such as telephone calls.

In complete contrast, Robinson teaches only fixed-location applications for his audio compression techniques. Robinson does not teach a cellular telephone (or any mobile device) having a microphone or capable of voice communications. Additionally, Robinson does not teach using a cellular telephone, or any device for that matter, to select a music recording from a remote source and then wirelessly receive the selected music recording from the remote source. Adding Walsh's teachings to Robinson, even assuming Walsh can properly be combined with Robinson (not conceded), does not result in the presently claimed invention.

**Dependent Claims.** Applicant submits that the dependent claims are allowable by virtue of their allowance from an allowable base claim and also in view of the additional limitation(s) set forth in each dependent claim. While applicant believes each dependent claim is allowable for these reasons, Applicant provides the following specific comments on selected dependent claims.

Those dependent claims directed to an mpeg or mp3 format (such as claims 11, 12, 13, 19, and 20) are rejected under Section 103 based upon a combination of Robinson, Walsh and Steele, with the examiner noting that Steele teaches mp3. Applicant traverses this rejection and points out that Robinson appears to expressly teach away from mp3 and seeks an alternate compression format to mp3. Applicant submits that it is not proper to combine a reference teaching mp3 with a reference that is expressly teaching away from mp3.

Those dependent claims directed to displaying data indicative of an artist or title during playback of a recording (such as claims 14, 15, 16, 21, and 34) have been rejected under Section 103 based upon a combination of Robinson, Walsh and Buchheim. Applicant traverses this rejection but has amended these claims to include a limitation clearly not taught or suggested in the cited art, namely, wirelessly receiving at the device at least one of the title and artist.

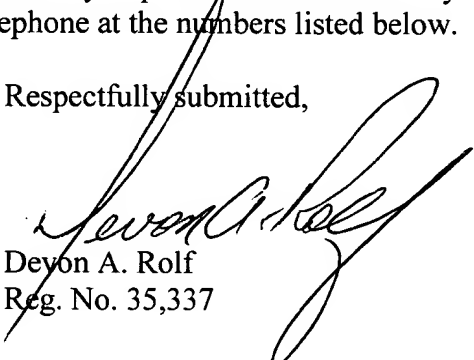
Dependent claim 28, as amended, is directed to downloading music from an online account, at a remote server, associated with the device or a user of the device. Dependent claim 28 has been rejected under Section 103 based upon a combination of Robinson and Walsh. Applicant traverses this rejection. The reference to an "account" in Walsh, upon which the examiner relies (at Col. 10, line 14), concerns "invoicing the user and charging payment against an account or credit card". That teaching in Walsh of a financial account has nothing to do with the claimed online account from which a user downloads a selected music recording.

New dependent claims 54-64 are added. No new subject matter has been added. Entry and allowance of these claims is requested.

**Miscellaneous.** Applicant amends the title to be more clearly indicative of the presently pending claims. Additionally, Applicant's file does not include an Abstract, and it appears to Applicant that an Abstract was inadvertently omitted at the time of filing of this Application. Accordingly, Applicant submits the enclosed Abstract. No new subject matter has been added.

Applicant submits that these amendments clearly place this application into condition for allowance and respectfully requests reconsideration by the Examiner. The Applicant may be reached by telephone at the numbers listed below.

Respectfully submitted,



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